

ILLINOIS POLLUTION CONTROL BOARD
March 21, 1984

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 83-40
)
OAKBROOK UTILITY COMPANY, INC.,)
an Illinois corporation,)
)
Respondent.)

JAMES L. MORGAN, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

WYNN & GERTINETTI (MR. PHILIP D. WYNN, OF COUNSEL) APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by W. J. Nega):

This matter comes before the Board on the March 18, 1983 Complaint brought by the Illinois Environmental Protection Agency (Agency) which alleged that, on specified dates between October 10, 1977 and July 21, 1982, the Respondent allowed discharges from the outfall pipes of its lagoon system to contain excessive levels of BOD₅ and suspended solids in violation of 35 Ill. Adm. Code 304.104(a) and 304.120(c) [formerly Rules 401(c) and 404(c) of Chapter 3: Water Pollution Regulations] and Section 12(a) of the Illinois Environmental Protection Act (Act).

On June 10, 1983, the Agency filed a Motion for Leave to File an Amended Complaint. The Amended Complaint was filed to reflect the fact that, since the filing of the original Complaint, the Respondent had amended its Articles of Incorporation to change its corporate name from Bellm Utility Company to Oakbrook Utility Company, Inc. (Oakbrook Utility).

A hearing was held on August 2, 1983. The parties filed a Stipulation and Proposal for Settlement on September 9, 1983.

On October 19, 1983, the Board entered an Interim Order which required more information as to the status of any pending grant applications by the City of Carlinville for the proposed wastewater connection.

On December 8, 1983, the Agency submitted Supplemental Information pertaining to the prospects for funding the proposed replacement of the wastewater treatment system serving the Oakbrook 5th and 6th Additions by connection to the City of Carlinville's sewer system.

The Respondent, Oakbrook Utility, is an Illinois corporation duly authorized to transact business in Illinois and is a public utility which is regulated by the Illinois Commerce Commission. The Respondent operates wastewater treatment facilities which serve the homes located in the 5th and 6th Additions of the Oakbrook Subdivision near the intersection of State Highways 4 and 108 by the eastern edge of the City of Carlinville in Macoupin County, Illinois.

Oakbrook Utility's wastewater treatment facilities, which currently serve 136 homes (with tie-ins presently available for 10 additional lots), include a sewer system and 4 single-cell lagoons for the collection and treatment of wastewater generated by the Oakbrook 5th and 6th Additions. (Stip. 2). Wastewater collected from the Oakbrook 5th Addition first flows into one lagoon and effluent from the lagoon then is discharged via an outfall pipe into an unnamed tributary of Macoupin Creek, an Illinois water. The Oakbrook 6th Addition is divided into an eastern section (designated as "6A") and a western half (called "6B"). Although wastewater collected from sections 6A and 6B flows into separate lagoons, the flows from the two lagoons then go into a common lagoon which discharges effluent via an outfall pipe into the unnamed tributary of Macoupin Creek. (Stip. 2-3).

At the hearing, two homeowners in the subdivision testified as to their concerns that the customers of the utility might have to bear the ultimate costs of the proposed wastewater interconnection between the Oakbrook Taggart woods area and the City of Carlinville which had an estimated project cost of \$230,320. (R. 16-23; see: Exhibits A and B). It is stipulated that the City of Carlinville, which has a population of about 5,675 people, has expressed a willingness to allow the connection of the Oakbrook 5th and 6th Additions to the city's wastewater treatment system. (Stip. 4).

As indicated in its Interim Order of October 19, 1983, the Board is also very concerned that the costs of the connection of the Oakbrook 5th and 6th Additions to the City of Carlinville's wastewater treatment system may ultimately be passed along to the relatively small number of the Respondent's customers in the form of a substantial rate increase.

In its submission of Supplemental Information filed on December 8, 1983, the Agency concluded that, although the City of Carlinville received a State grant for supplemental facilities

planning from the Agency on September 22, 1978, the prospects of obtaining funding of the proposed replacement of the wastewater treatment system serving Oakbrook 5th and 6th Additions by connection to the City of Carlinville's sewer system under the State's Anti-Pollution Fund and the Federal Construction Grants Program "are quite limited at the current time".

The Agency has pointed out that, because of severe funding constraints, State funding of the project "is not possible at the present time". Federal funding of the project might possibly be considered if the City of Carlinville were the prospective grant recipient, but this would require city ownership of the constructed facilities. If ownership was transferred to the city, the Federal government would probably assign a new and separate priority number to the project "which would likely not allow federal funding in the foreseeable future".

Nonetheless, the Agency has suggested that 2 other possible funding methods might be feasible. Funding may be available through the Environmental Facilities Financing Authority which issues 20-year bonds to persons or businesses (rather than municipalities) solely for the purpose of pollution prevention and compliance with pollution control regulation requirements. Because of the bond and trustee costs involved, the minimum bond amount is \$100,000. The Small Business Administration (SBA) sometimes guarantees such loans if the borrower qualifies as a small business and meets other SBA requirements. Once the loan is guaranteed by the SBA, the bonds generally have an AAA rating based on their Federal backing.

Another possible funding source suggested by the Agency is the Farmers Home Administration (FmHA). The FmHA may be willing to guarantee a loan through its Business & Industrial Loan Program, if the Respondent obtains a loan through a local lender and qualifies under FmHA regulations. Similarly, if Oakbrook Utility relinquishes ownership of the utility's facilities to a homeowner's not-for-profit corporation, the FmHA's Water & Waste Disposal Loan Program might provide a loan for the connection project. Interest rates under the FmHA's Water & Waste Disposal Loan Program are closely related to current market fluctuations and are presently available at a 10.25% rate.

The Board encourages the Respondent to fully investigate all possible sources of funding in order to eliminate or minimize any undue financial burden on its customers. As the Agency has suggested, it appears that, in the past, the Respondent's "recalcitrance in its pursuit of such funding" has had a detrimental effect on the prospects for receiving adequate financial aid. It is hoped that, in the future, the Respondent will fully utilize all the resources at its disposal and properly consider all the available options for financing which are realistically attainable.

The Board notes that, if the Oakbrook Utility asks for a rate increase for the connection project, such a rate increase request is within the purview of, and subject to review by, the Illinois Commerce Commission after appropriate public hearings and public input. The Board assumes that such review by the Illinois Commerce Commission will adequately safeguard and protect the interests of the Respondent's customers so that a fair and equitable decision is reached.

The proposed settlement agreement provides that the Respondent admits the violations alleged in the Complaint and agrees to: (1) cease and desist from further violations; (2) follow a specified compliance plan and schedule to facilitate connection of the Respondent's sewer system to the City of Carlinville's wastewater treatment plant (including the development of the necessary engineering plans and specifications, obtaining the requisite Agency construction and operating permits, disposition of the existing lagoon system, and operation and maintenance of the present lagoon system until connection to the Carlinville plant); (3) begin operation of the connection to the City of Carlinville's wastewater treatment plant no later than October 1, 1984; (4) meet the Agency's interim effluent limitations and monitoring requirements for BOD₅ and suspended solids; and (5) pay a stipulated penalty of \$2,000 in two installments into the Environmental Protection Trust Fund for the purpose of controlling water pollution in Illinois. (Stip. 5-8).

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180.

The Board finds that the Respondent, Oakbrook Utility Company, Inc., has violated 35 Ill. Adm. Code 304.104(a) and 304.120(c) [formerly Rules 401(c) and 404(c) of Chapter 3; Water Pollution Regulations] and Section 12(a) of the Illinois Environmental Protection Act. The Respondent will be ordered to cease and desist from further violations; follow the specified compliance plan and schedule; meet the requisite interim effluent limitations; and to pay the stipulated penalty of \$2,000 in two installments.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondent, the Oakbrook Utility Company, Inc., has violated 35 Ill. Adm. Code 304.104(a) and 304.120(c) [formerly Rules 401(c) and 404(c) of Chapter 3: Water Pollution Regulations] and Section 12(a) of the Illinois Environmental Protection Act.

2. The Respondent shall cease and desist from further violations.

3. Within 30 days of the date of this Order, the Respondent shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay the first installment of \$500 (on the total stipulated penalty of \$2,000) which is to be sent to:


Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

Within 365 days of the date of the Order, the Respondent shall pay the second installment of \$1,500 (on the total stipulated penalty of \$2,000), which is to be paid in the same manner and fashion as the first installment. Additionally, within 30 days of the date of the Order, the Respondent shall file with the Agency a waiver of any rights of recovery of these monies, as per its stipulated agreement with the Agency.

4. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on September 9, 1983, which is incorporated by reference as if fully set forth herein.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 21st day of March, 1984 by a vote of 6-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board